

MERCY, DEATH, AND POLITICS: An Analysis of Executions and Commutations in New York State, 1935–1963†

JOSHUA D. FREILICH†† and CRAIG J. RIVERA
University at Albany, State University of New York

ABSTRACT: *This study focuses on the 249 executions and the 49 commutations not based upon any policy per se of the New York State governors between the years 1935 and 1963. Clemency is an inherently political decision. Therefore, it is expected that groups which are disfavored or viewed as dangerous (blacks, males, felony murderers, and non-youthful offenders) will register higher execution rates than favored groups. Contingency tables and logistic regression analyses offer partial support in that offender race and age are significantly related to final disposition.*

INTRODUCTION

After an offender has exhausted his or her judicial appeals, attention turns to whether the governor or the state pardon board will grant executive clemency. Clemency, if granted, usually reduces the death sentence to life imprisonment. Historically, clemency has played an important role in the death penalty process. In some instances, clemency has been purely a gift or an “act of grace” to the offender. There are other times when clemency has prevented grave miscarriages of justice from occurring (Kobil, 1991). Despite its prominence, clemency powers are discretionary and not subject to any restraints. The United States Supreme Court has recognized the extremely important role clemency serves in the death penalty process:

It is an unalterable fact that our judicial system, like the human beings who administer it, is fallible. . . . History shows that the traditional remedy for claims of innocence based on new evidence, discovered too late in the day to file a new trial

† A draft of this paper was presented at the annual meeting of the American Society of Criminology, Chicago, IL, 1996. The authors would like to thank Bill Doerner, C. Loftin, A. Lizotte, J. Acker and four anonymous reviewers for helpful comments on earlier drafts of this paper.

†† Direct all correspondence to: Joshua D. Freilich, School of Criminal Justice, University at Albany, State University of New York, Draper Hall 213, 135 Western Avenue, Albany, NY 12222. E-mail: JF8142@cnsvox.albany.edu.

motion, has been executive clemency (*Herrera v. Collins*, 1993, pp. 853, 868-869).

New York State had one of the highest execution counts in the country (Acker, 1990), with its last execution taking place in 1963. The New York State Court of Appeals in 1984, after a series of decisions narrowed the state's death penalty law, declared the remaining portion of the capital punishment statute unconstitutional (Acker, 1990). New York operated without a replacement statute until 1995 when the death penalty was reintroduced for certain capital crimes (Acker, 1990). The present study hopes to shed light on the factors which historically influenced clemency decisions in New York by comparing characteristics of executed and commuted offenders, all of whom were convicted of murder, for the years 1935 to 1963. This inquiry encompasses the period extending from 1935 until 1963 because no executions occurred in New York State after this point. Death row inmates from 1964 through 1970 had their death sentences commuted under a variety of *per se* policies implemented by the governor (Acker, 1990). These commutations were not decided on a case-by-case basis. Therefore, they were removed from the analysis.

It is important to examine clemency decisions for a number of reasons. First, it is of general historical interest as to whether all offenders were treated justly or whether certain groups were treated inequitably. Second, one can expect constitutional challenges to be mounted against the new death penalty statute. The New York State Court of Appeals most likely will examine the manner in which the state historically implemented the death penalty. This inquiry may well include a look at the commutation process. Third, the New York State Constitution (New York Constitution, Article 4, §4) grants commutation power solely to the governor but does not provide any guidelines or procedures. Thus, a study on past clemency practices is important because it may enlighten future governors when they review death sentences.

LITERATURE REVIEW

The literature contains nine studies which compare characteristics of executed and commuted offenders in the United States. Mangum's (1940) study combines data from several states, thus it is eliminated from presentation. Table 1 lists the other eight previous studies, all of which focused on a particular state. The table also displays the time frame, the sample size of each study, the clemency procedure utilized in each state, as well as any statistical test of significance the researchers utilized.

TABLE 1
Prior Studies Comparing Executed to Commuted
Offenders in the United States

State	Authors	Years Studied	Sample Size	Clemency Procedure	Statistical Test
NC	Johnson (1957)	1909–54	660	Sole discretion of the governor	None
OH	Ohio Legislative Service Commission (1961)	1950–59	67	Sole discretion of the governor	None
MD	Maryland Legislative Council Committee (1962)	1936–61	122	Sole discretion of the governor	None
PA	Wolfgang, Kelly, & Nolde (1962)	1914–58	438	Governor can commute only if the Pardon Board makes a favorable recommendation	Chi-square
NJ	Bedau (1964)	1907–60	232	Sole discretion of the governor	Chi-square
OR	Bedau (1965)	1903–64	92	Sole discretion of the governor	None
FL	Vandiver (1993)	1924–66	255	Pardon Board grants commutations, although the governor sits on the Board.	Chi-square
TX	Marquart, Ekland-Olson, & Sorenson (1994)	1924–72	461	Governor can commute only if the Administrative Board makes a favorable recommendation	Chi-square

Table 2 summarizes the findings for those variables examined in at least half these studies. The significance levels reported in the table refer to the original analysis and not to any subsequent reexamination. A comparison of racial commutation rates indicates blacks (nonwhites in the Oregon study) are less likely to be commuted than whites. Felony murderers (offenders who committed a murder during the course of another felony) are more likely to be executed than nonfelony murderers. Table 2 also shows it is rare for female offenders to be sentenced to death. Of those women facing capital punishment, most had their death sentences commuted to life.

Only two studies examine whether victim race is associated with final disposition. Vandiver (1993) finds 44.3% of offenders who killed blacks in Florida had their death sentences commuted compared to 15.2% of offenders with white victims. However, Marquart and his col-

TABLE 2**Summary of Prior Studies Examining Offender Race, Type of Murder, and Sex with Respect to Commutations in Death Penalty Cases**

State	% Whites Commuted	% Blacks Commuted	% Felony Commuted	% Nonfelony Commuted	# Women Commuted	# Women Executed
NC	NA	NA	NA	NA	4	2
PA	20.2*	11.6	13.6*	26.4	2	2
NJ	17.7	8.1	7.6*	22.6	3*	0
FL	28.1	20.5	16.7*	30.3	1	NA
OH	49.0	22.0	NA	NA	NA	NA
MD	40.0	36.1	NA	NA	1	0
OR	25.3	22.2	20.0	25.8	1	0
TX	29.0*	14.0	NA	NA	3	0

* denotes statistical significance at the .05 level.

leagues (1994) do not report any significant racial differences in their Texas study. Vandiver (1993) also looks at whether offender race and victim race contribute to the final disposition in Florida. She notes 5.3% of blacks who killed whites had their death sentences commuted, compared to 44.3% of blacks who killed blacks. This racial difference is statistically significant. In terms of age, three studies (Bedau, 1964; Bedau, 1965; Wolfgang, Kelly, & Nolde, 1962) determine the youngest offender age group (15–19) exhibits the highest commutation rate, even though the results from Oregon are not statistically significant.

The present inquiry uses the outcomes of these previous studies to construct hypotheses regarding clemency decisions. These hypotheses, in turn, are tested by examining characteristics of executed and discretionary commuted offenders in New York from 1935 to 1963.

HYPOTHESES

This paper asserts that clemency is an inherently political decision. The governor is the only person in New York who has the power to commute death sentences. There are no formal procedures or guidelines in place. Therefore, the governor's power to commute is without constraint. New York governors are not required to grant clemency reviews to death row inmates. A decision not to conduct a clemency review is, for all practical purposes, a clemency rejection since the death penalty is upheld automatically.

The decision a governor reaches regarding commutation in a capital case can provoke a strong reaction from many quarters. Because the decision is made solely by the governor, citizens have an exact target

upon whom to vent their reaction. The expectation is that governors will base clemency decisions on their sense of what the public wants and will pursue the choice least likely to harm their political futures. Therefore, public opinion and public attitudes will influence the governor's decision.

The literature contains some support for this line of thinking. The Ohio Legislative Service Commission (1961, p. 60), for instance, remarked "The two considerations most frequently mentioned in these reports as influencing (clemency) recommendations were public opinion and comparative justice." Furthermore, part of the reason why commutations have decreased in recent years is because the death penalty is overwhelmingly popular and governors are afraid to confront these public attitudes (Bedau, 1990-1991; see also Tabak, 1986).

This general framework is helpful when trying to explain variations in case dispositions. For instance, most female offenders in the past have won death sentence commutations. One possible explanation here might lie in the chivalrous attitudes shared by many during the earlier part of the century. Women were placed on a pedestal. Most people thought it unseemly to execute a woman (see Johnson, 1957). Given this orientation, it is predicted that New York governors will commute most, if not all, female offenders sentenced to death.

Previous studies support the notion that black offenders are more likely to be executed than their white counterparts. Bowers and Pierce (1980) offer an interpretation involving the concepts of "minority group oppression" and "majority group protection." They define "minority group oppression" as the disproportionate use of the death penalty against offenders or groups who are dehumanized or exploited due to their political situation. "Majority group protection" refers to the disproportionate use of capital punishment against offenders who have attacked members of the dominant groups of society. For hundreds of years, whites dominated American society while blacks were looked down upon and exploited. Based on this argument, it is predicted that New York governors will commute a lower percentage of black offenders and a higher percentage of offenders who killed black victims. Furthermore, the lowest commutation rates should appear among black offenders convicted of killing white victims.

Extremely young offenders (aged 15-19) usually enjoy a high commutation rate. One reason for this observation might be because society does not regard these people as fully responsible for their actions. Thus, one would expect extremely young offenders to have a higher commutation rate.

Previous studies indicate felony murderers are more likely to be executed than nonfelony murderers. Nonfelony murders usually in-

volve killings between people who know each other and often involve crimes of passion. Generally, these crimes are private, personal, and nonrecurring. Felony murders usually involve homicides occurring during robberies and burglaries. Quite often, the offender and the victim do not know each other, making these crimes more impersonal. Thus, society may be more fearful of the felony murderer and view these offenders as a greater threat (see Weisberg, 1983). It is predicted that New York governors will commute a greater percentage of nonfelony murderers as compared to felony murderers.

The category of felony murder encompasses a wide range of homicides. The most common felony murders occur during robberies, burglaries, and rapes. It is possible that chivalrous attitudes would motivate most people to view a rape murder (with its presumed female murder victim) as a more serious and heinous crime than other nonrape felony murders. This line of thinking leads to the expectation that a higher percentage of rape felony murderers will be subject to execution when compared to all other murderers.

Commutation decisions carry political liability. The general public supports the death penalty. Therefore, it is predicted that governors will be less likely to commute a case during an election year. Similarly, because many Democrats are perceived as being "soft" on crime, it is hypothesized that Democratic governors will be more likely to commute than their Republican counterparts.

Finally, a few other variables such as location of the murder, who the governor was at the time of disposition, and whether or not the New York Court of Appeals unanimously affirmed the conviction were considered worthy of examination. However, no specific predictions as to the effect of these variables are offered.

DATA

The data set for this study consists of the 249 offenders who were executed and the 49 beneficiaries of discretionary commutation decisions in New York State between 1935 and 1963. This file was created by consulting a number of different sources. Data concerning offender race, age (at time of disposition), sex, county of conviction, type of crime, and date of disposition for the 249 executed offenders were obtained from "Executions in the United States, 1608–1991: The Espy File, ICPSR 8451." The principal investigators, Watt Espy and John Ortiz Smykla (1994), assembled this information by perusing state documents, contemporary newspaper accounts, along with other historical and appellate court records. The current authors gathered similar information about the 49 discretionary commutees from the public

records of each governor, published Court of Appeals opinions, the Record on Appeal, briefs filed with the New York State Court of Appeals, and contemporary newspaper accounts.

The age for all executed offenders at the time of execution was obtained from the Espy files. Unfortunately, the Espy files did not contain offender age at the time of the crime. In addition, there were some minor problems regarding the age of commuted offenders. Although an offender's age was usually known at the time of the trial, the exact date of birth was not always available. The commutation did not normally occur until one or two years after the trial. Therefore, in some cases there is a one-year margin of error as to the correct offender age at the time of the commutation. For example, if an offender with an unknown birthday was tried in June of 1940 at the age of 40 and was commuted in February of 1942, it is not clear whether the offender was 41 or 42 years old at the time of commutation. In these cases, the offender's age was coded as the younger age.

Although the age variable in this study refers to age at final disposition, previous studies rely upon age at the time of the offense. These studies report that extremely youthful offenders (aged 15–19 at the time of the crime) were more likely to have their sentences commuted. Most cases only took a year or so from the time of the crime until final disposition. Therefore, it is believed that offenders aged 16–20 at the time of disposition fell into the 15–19 grouping at the time they committed their crimes. A dummy variable was created to allow a meaningful comparison with previous studies (1 = 16–20 at time of disposition, 0 = older than 16–20). This dummy variable allows a specific examination of the hypothesis that extremely youthful offenders are treated more leniently.

Data concerning victim race for the 249 executed offenders were obtained from Lumer and Tenney (1995) who, in turn, had received the data from Watt Espy. Information regarding victim race for the 49 discretionary commutes was obtained from the same four sources listed earlier. Race was gathered as a categorical variable (white, black, native American, Asian or Pacific Islander, and Hispanic). Victim and offender race were recoded as white (1) versus nonwhite (0), as well as black (1) versus nonblack (0).

A dummy variable was created for type of crime to distinguish a nonfelony (0) from a felony murder (1). A second dichotomous variable allows for a distinction between rape felony (1) and all other murderers (0). County of conviction placed the five counties encompassing New York City into a single category (1) for comparison with the remainder of the state (0). Whether or not the conviction was unani-

mously affirmed by the New York Court of Appeals (1 = yes, 0 = no) was obtained for all cases from published court opinions.

Information concerning the governor, the governor's political party, and whether final disposition occurred during an election year was obtained from the New York State Red Book (Mitchell, 1995). Four New York State governors frame this study: Lehman (1935–December 3, 1942), Dewey (1943–1954), Harriman (1955–1958), and Rockefeller (1959–1963). A dummy variable was constructed for each governor, indicating whether or not he was in office for a particular offender's disposition (1 = yes, 0 = no). Two important points should be noted here. First, Lieutenant Governor Charles Poletti served as governor for the last 28 days of Lehman's term. No executions or commutations occurred during this time. Second, Frank Kiekart had his death sentence commuted on May 31, 1935 by Lieutenant Governor Bray, who was acting as governor in place of Lehman. This decision was coded under Lehman since it is assumed Bray was carrying out the policies of his superior.

The dependent variable for each offender was coded as either being executed (1) or commuted (0). Former Governor Lehman instituted a policy of automatically reducing a death sentence to life if affirmation by the Court of Appeals was not unanimous (Abramowitz & Paget, 1964; Black, 1974). Hence, 16 commutations were automatic or the result of a *per se* policy and were not decided by the governor on an individual case-by-case basis. An automatic policy, such as what occurred in these cases, means there was no opportunity for the decision-making process to become politicized or influenced by public opinion. Thus, these 16 cases are removed from the analysis. The authors were unable to locate the New York Court of Appeals records for an additional 7 offenders. These cases are also coded as missing data. Therefore, of the 72 original commutations, 23 were ultimately coded as missing in the discretionary commuted/executed dependent variable.

ANALYSIS

Contingency tables were constructed between the dependent and independent variables (the specific χ^2 and probability values are available upon request from the authors). The dummy variable indicating whether or not the offender is in the 16–20 age group is statistically significant. Therefore, youthful offenders are more likely to have their death sentences commuted.

Offender race indicates that 13.5% of black defendants had their death sentences commuted, compared to 17.7% of nonblack defendants. Results show 16.4% of white defendants had their sentences com-

muted, while 16.5% of nonwhite defendants were commuted. Neither difference is statistically significant. The difference in white and non-white commutation rates is minuscule. Therefore, only the black versus nonblack distinction will appear in subsequent analyses.

Offender race appears unrelated to final disposition. However, it is possible for an interaction effect to occur between race and age. Previous investigations, as well as the current study, have found that extremely youthful offenders are more likely to be commuted. Perhaps the mitigating effect of age offsets the aggravating effect of race for youthful offenders, leading to a situation where race only has an effect for older offenders. A contingency table was created between the dependent variable and the black defendant dummy variable, controlling for age, to examine this question. Those results reveal no difference in discretionary commutation rates by race for young offenders. The figures show 30% of young blacks are commuted, as are 29.4% of all other young offenders. However, among offenders over the age of 21, nonblacks are nearly twice as likely to be commuted (16.7% to 8.7%), but this difference is not statistically significant. This pattern indicates it might be fruitful to search for an interaction effect between offender race and offender age later.

Victim race exerts no significant effect on the outcome. Combining offender race and victim race (ie., black killing a nonblack versus all others, and a black killing a white versus all others) yields statistically insignificant results. Contrary to prior studies, felony murderers are not more likely to result in an execution than nonfelony murderers. However, statistically significant results are achieved when looking at rape felony murders versus other felony murders. All 21 rape felony murderers were executed, compared to 82% of all other murderers.

Governor Rockefeller was significantly more likely to commute (39.1%) than Governors Harriman (16.0%), Dewey (15.2%), or Lehman (13.8%). Location of the incident, governor's political party, election year status, and whether the Court of Appeals unanimously affirmed the death sentence are all statistically insignificant.

Before turning to a multivariate analysis, one should realize there is a time-series component to the data. The cases span a sequential set of months and years from 1935 to 1963, which could lead to potential problems of autocorrelation (Pindyk & Rubinfeld, 1981). Year is not included in the equations because it is highly collinear with the governor and it was deemed more desirable to retain the governor variables. The effect of any positively correlated error terms will be to bias the standard errors of the regression coefficients down, resulting in larger *t*-statistics. This condition could lead to an indication of statistical signifi-

cance where, in fact, none exists. Thus, one needs to approach statistically significant results with caution.

Several models were estimated, two of which are reported, to test the effects of various independent variables on final disposition while controlling for extraneous influences. The list of variables included in the models, as well as the results, are displayed in Table 3. An odds ratio less than one indicates a negative relationship, in that the "1" group (e.g., offenders aged 16-20) has lower odds of being executed than the "0" group (e.g., offenders aged 21 and older).

TABLE 3
Logistic Regression Models Predicting an Execution versus a Commutation

Variable	Model I		Model II	
	Odds Ratio	Significance Level	Odds Ratio	Significance Level
Election Year	1.11	.81	1.18	.73
Unanimous	1.20	.71	1.22	.69
New York City	0.81	.57	0.88	.74
Felony Murder	0.63	.18	0.63	.18
Gov. Dewey	0.77	.52	0.78	.54
Gov. Harriman	0.99	.99	0.94	.92
Gov. Rockefeller	0.14	.00	0.12	.00
Black Victim	1.08	.93	0.93	.93
Black Offender	2.67	.04	4.21	.02
Offender Aged 16-20	0.27	.00	0.46	.20
Black Offender X Offender Aged 16-20	NA	NA	0.25	.15

Political party was highly collinear with governor. Thus, it was removed from both equations. Two reasons guided this strategy. First, the hypothesis states that public opinion will exert a heavy influence on the governor's decision. Second, while two governors were Democrats and two were Republicans, their ideologies did not vary by political party. It appears they made decisions as individuals and not as party members. Thus, it was considered more beneficial and interesting to focus on the governor variable as opposed to the political party variable.

Three variables are significant at the .05 level in the first model contained in Table 3. First, Rockefeller is more likely to commute than Governor Lehman (the comparison governor for the equation). Second, black offenders are more likely to be executed. Third, extremely young offenders are more likely to have their sentences commuted.

The finding that offender race is significant in the multivariate analysis, but insignificant in the contingency table analysis, indicates a

possible suppression effect. Perhaps the age variable is impinging upon the effect of race. Young people are less likely to be executed. Therefore, this effect could surface if blacks in the study group tend to be younger than nonblacks. In this case, the effect of being young would balance out the effect of being black, resulting in no apparent impact when age is not controlled. A contingency table analysis reveals blacks (whether executed or commuted) are significantly younger than nonblacks. This relationship would support Bowers's (1984, p. 77) comment that "it could be that blacks [on death row] were, on average, younger than whites when they committed the same [capital] offenses." Thus, it makes sense for race to emerge as a significant predictor when age is controlled for in the logistic regression solution. The related issue of an interaction effect between race and age will be examined shortly.

A dummy variable measuring whether the murder involved a black offender killing a nonblack victim was added to the analysis. Including this term in the equation presents highly collinear results with the separate black offender and black victim terms. The inclusion of this measure results in problematic results, such as significant odds ratios of 24.02 and 23.99 for the offender-victim variable and the black victim variable, respectively. One must include both the original offender and victim terms in the model to gain a correct interpretation of the offender-victim coefficient. Consequently, this multicollinearity problem cannot be solved by simply removing the original offender and victim terms. As a result, this model is eliminated from further consideration.

The issue of whether rape felony murderers are treated more harshly than other murderers was examined. After retaining all the other variables from the first model, the odds of a rape felony murderer being executed are estimated to be nearly 1200 times greater than the odds for all other murderers and the coefficient is statistically insignificant. This apparent anomaly stems from the fact that all 21 rape felony murderers were executed. Estimating the odds and their significance becomes problematic and cannot be examined adequately whenever all the cases fall into a single category of the dependent variable.

Following the findings in the contingency table analysis, it seems appropriate to question whether race and age interact in their effect on the dependent variable. Based upon the contingency tables, race has a potential effect only for offenders aged 21 and above (although the initial logistic regression model paints a slightly different picture), with blacks being treated more harshly than nonblacks. However, since the effect is statistically insignificant for both age groups, it appears most likely there is no interaction.

To examine this issue, an interaction term is created by multiplying the dummy variable for black offender by the dummy variable for age and placing it in the equation with all the variables from the original model. The interaction term is statistically insignificant, indicating no interaction between race and age of offender. This outcome is in line with findings from the contingency table analysis. The effect of race is similar for both age groups. The black offender variable is significant, indicating that for inmates who are over 20 at the time of the disposition, blacks are more likely to be executed than nonblacks. Again, an insignificant interaction term indicates this effect is similar for offenders who were younger than 20 at the time of the disposition.

DISCUSSION

The hypotheses generated from the previous literature received partial support. For example, extremely young defendants were less likely to be executed. The logistic regression models revealed black offenders were more likely to be executed. Investigation of a possible interaction involving race and age did not yield a significant effect, indicating the effect of race is similar across ages. The hypothesis regarding victim race received no empirical support. Furthermore, combining offender with victim race unearthed no discernible effect.

With respect to offender gender, all four women sentenced to death in New York were executed. This observation is extremely surprising, especially in light of Streib's (1998) comment that women are not likely to be arrested for murder, extremely unlikely to be sentenced to death, and are almost never executed. Less than 1% of all executions involve women. One might be tempted to conclude that New York administered the commutation process from 1935 to 1963 free of any paternalism and any gender stereotypes that typified other states. However, it is also possible that the particular facts of each case might have influenced the decision-making process and there is no one underlying reason as to why these four women were all executed.

Surprisingly, a felony murder charge did not increase the likelihood of execution. A closer look at rape felony murders shows that all 21 rape felony murderers were executed in comparison to 82% of all other murderers. Thus, the distinction between a rape felony appears more important than the felony-nonfelony dichotomy. It is plausible to conclude that most victims of rape felony murder are women. Therefore, a chivalry effect appears to surface here.

Governor Rockefeller had a much higher commutation rate than did the other three governors. Rockefeller served during a period when opposition to the death penalty was mounting (Acker, 1990; Bohm,

1991). While one might claim that Rockefeller's commutation rate reflected public opinion, one could maintain that Rockefeller was only following his own personal beliefs in his frequent use of the commutation power. Rockefeller's election in the first place might signal that the public shared his ambivalence toward the death penalty. Instead of governors merely following public opinion about the death penalty, it may be that voters select governors who reflect their own beliefs regarding the death penalty. In either scenario, Rockefeller's frequent use of the commutation power appears to be consistent with public opinion at the time. However, Governor Harriman's commutation policy was not in sync with public opinion. While Harriman also served during a period of rising opposition to the death penalty, he was less likely to commute than Rockefeller. However, Harriman was in office prior to Rockefeller and this period marked the beginning of the rise in death penalty opposition (Bohm, 1991). In any event, future researchers should pay greater attention to influences in the political arena.

CONCLUSION

Having examined the effect of several variables on the commutation decision, it is appropriate to comment on whether improper influences affected the commutation process. Ideally, extralegal variables like race and sex should have no influence on the commutation process. The conclusion is mixed as to whether or not the commutation process operated properly during the time period in question. The finding that victim race, the combination of offender and victim race, and offender gender were insignificant is somewhat encouraging. However, the influence of offender race is problematic because it indicates racial discrimination may have infiltrated the commutation process.

This study did not examine every variable of interest. For instance, type of counsel, ethnic and religious background, socioeconomic status of the offender and victim, and allegations that the defendant was mentally ill or mentally retarded were not examined. More importantly, the present study did not examine how the seriousness or gruesomeness of the murder, social prominence of the offender or the victim, public visibility of the case, whether prominent individuals argued for or against clemency, and the victim-offender relationship impacted the final disposition. Nor did the current study examine racial disparity in the stages preceding the commutation decision (e.g., arrest decisions, charging decisions, and sentencing decisions). The inclusion of any one of these variables might lead to different results. These cautions indicate the continued need for more research on this topic.

Capital punishment is an emotional issue about which many people feel passionately. The one thing that both sides of this debate can agree upon is that death penalty decisions should operate equitably and not be based upon illegitimate, discriminatory, and arbitrary factors. Thus, it is hoped that those who administer the death penalty and oversee the commutation process make every effort to avoid any errors of the past.

REFERENCES

- Acker, J. R. (1990). New York's proposed death penalty legislation: Constitutional and policy perspectives. *Albany Law Review*, 54, 515-616.
- Abromowitz, E. & Paget, D. (1964). Executive clemency in capital cases. *New York University Law Review*, 39, 136-192.
- Bedau, H. A. (1964). Death sentences in New Jersey, 1907-1960. *Rutgers Law Review*, 19, 1-64.
- Bedau, H. A. (1965). Capital punishment in Oregon, 1903-1964. *Oregon Law Review*, 45, 1-39.
- Bedau, H. A. (1990-1991). The decline of executive clemency in capital cases. *N.Y.U. Review of Law & Social Change*, 38, 255-272.
- Black, C. (1974). *Capital punishment: The inevitability of caprice and mistake*. New York: W. W. Norton and Company.
- Bohm, R. M. (1991). American death penalty opinion 1936-1986: A critical examination of the Gallup polls. In R. M. Bohm (Ed.), *The death penalty in America: Current research* (pp. 113-142). Highland Heights, KY: Academy of Criminal Justice Sciences.
- Bowers, W. J. (1984). *Legal homicide: Death as punishment in America*. Boston: Northeastern University Press.
- Bowers, W. J. & Pierce, G. L. (1980). Arbitration and discrimination under post-Furman capital statutes. *Crime & Delinquency*, 26, 563-634.
- Espy, W. & Smykla, J. O. (1994). *Executions in the United States, 1608-1991: The Espy file*. Ann Arbor, MI: Interuniversity Consortium for Political and Social Research.
- Herrera v. Collins*, 113 U.S. 853 (1993).
- Johnson, E. H. (1957). Selective factors in capital punishment. *Social Forces*, 36, 165-169.
- Kobil, D. T. (1991). The quality of mercy strained: Wrestling the pardoning power from the king. *Texas Law Review*, 69, 569-641.
- Lumer, M. & Tenney, N. (1995). The death penalty in New York: An historical perspective. *Journal of Law & Policy*, 4, 81-142.
- Mangum, C. S., Jr. (1940). *The legal status of the negro*. Chapel Hill: The University of North Carolina Press.
- Marquart, J. W. & Eklund-Olson, S., & Sorenson, J. R. (1994). *The rope, the chair and the needle: Capital punishment in Texas 1923-1990*. Austin: University of Texas Press.
- Maryland Legislative Council Committee (1962). *Report of the legislative council committee on capital punishment*. Baltimore: Maryland State Legislature.
- Mitchell, G. A. (ed.) (1995). *The red book* (93rd ed.). Guilderland, NY: New York Legal Publishing Corp.
- New York Constitution, Article 4, §4.
- Ohio Legislative Service Commission (1961). *Capital punishment research report no. 46*. Columbus: State of Ohio.

- Pindyk, R. S. & Rubinfeld, D. L. (1981). *Econometric models and economic forecasts*. New York: McGraw-Hill Book Company.
- Streib, V. L. (1998). Executing women, children, and the retarded: Second-class citizens in capital punishment. In J. R. Acker, R. M. Bohm, & C. S. Lanier (Eds.), *America's experiment with capital punishment: Reflections on the past, present, and future of the ultimate penal sanction*. Durham, NC: Carolina Press.
- Tabak, R. J. (1986). The death of fairness: The arbitrary and capricious imposition of the death penalty in the 1980's. *New York University Review of Law & Social Change*, 14, 797-848.
- Vandiver, M. (1993). The quality of mercy: Race and clemency in Florida death penalty cases, 1924-1966. *University of Richmond Law Review*, 27, 315-343.
- Weisberg, R. (1983). Deregulating death. *Supreme Court Review*, 8, 305-395.
- Wolfgang, M. E. & Kelly, A. K., & Nolde, H.C. (1962). Comparison of the executed and commuted among admissions to death row. *Journal of Criminal Law, Criminology & Police Science*, 53, 301-311.